

LS 6-1712

28 August 1966

MEMORANDUM FOR: SEA-DD/S

SUBJECT : Agency Relief in Personal Hardship Cases

1. We have been advised that the inability of this Agency to provide certain allowances and benefits to employees and their dependents has often created cases of serious personal hardship. It is the desire of the Agency to alleviate personal hardship whenever possible. In order that steps may be taken to meet particular problems which continue to arise it has been requested that we prepare a memorandum outlining the reasons for the Agency's inability to meet some of these problems and suggesting possible solutions.

2. Some of the benefits which would aid most in avoiding personal hardship but which we have no authority to provide at the present time are the following:

- a. Travel of dependents for hospitalization.
- b. Medical care for dependents at overseas posts.
- c. Return of employees and dependents to United States in cases of critical illness or death of parents.
- d. Medical examination of dependents prior to travel to overseas posts.
- e. Medical examination and treatment of dependents upon return from hardship posts.

3. General Counsel's opinion no. 52-3 provides a partial analysis of this problem. A portion of that opinion most pertinent to the problems at hand is as follows:

"3. It is often assumed that it is the general policy of this Agency to reimburse its personnel for any special expenses which they may incur in performing their duties for this Agency. A more correct statement would be that generally CIA personnel are reimbursed only for those expenses for which they would be reimbursed if they were

employed by any other department or agency of the Government, except that, where operational or security requirements peculiar to this Agency require an employee to incur expenses, he may be reimbursed.

"4. A legal analysis of the latter statement may be made as follows:

"a. Generally, Government funds may be expended only in payment of Government obligations.

"b. Certain expenses of Government employees, such as travel, etc., are by specific statute made obligations of the Government and are therefore reimbursable expenses.

"c. By specific statute this Agency is given power to expend Government funds without regard to the restrictions imposed on other agencies (Central Intelligence Agency Act of 1949, P.L. 110, Section 10b). By interpretation of the Comptroller General (31 Comp. Gen. 191, 21 November 1951), this broad power is limited to the expenditure of funds necessary to carry out the extraordinary functions assigned to this Agency by the Central Intelligence Agency Act.

"d. Therefore, if a given expense would not be reimbursable if incurred by personnel of another Government department or agency, it is not reimbursable if incurred by CIA personnel, unless such expenses were incurred because of the operational or security requirements peculiar to this Agency."

4. Applying the above analysis to the specific needs set forth in paragraph 2 above and bearing in mind that there is not statutory authority for payment of the benefits set forth in that paragraph it is apparent that expending funds under section 10(b) of the CIA Act of 1949 to provide such benefits would not be in accordance with law. It would be particularly difficult to justify expenditures under section 10(b) because most of the benefits desired would accrue directly to a dependent rather than an employee. In most cases where expenditure of funds can be justified under section 10(b) to meet the peculiar problems of this Agency the justification, though applicable to the employee, would hardly reach the case of a dependent. The benefit in paragraph 2c above would reach both employees and dependents, but this particular benefit is not provided for Government employees of any class or in any department and a claim that it is necessary for this Agency to provide it in order to carry out the Agency's extraordinary functions does not stand scrutiny.

5. General Counsel's opinion no. 53-4 provides a comprehensive review of the Agency's statutory authority to pay for medical treatment, hospitalization, and travel expenses connected with hospitalization of its employees. Inasmuch as several of the problems stated in paragraph 2 above relate to medical care, that opinion should be reviewed if more detailed information on our authorities is desired. Taking the problems stated in paragraph 2 above one by one the following comments may be made in regard to each:

a. Travel of dependents for hospitalization is discussed in General Counsel's opinions nos. 53-5 and 55-13. Whereas we have no authority to provide such travel, we can and should make use of military transportation which is sometimes available in areas where Agency employees are stationed. However, the fact that dependents of some Agency employees have access to such transportation cannot be a basis for providing transportation for those who do not or even for those who are prevented by cover or security considerations from using it.

b. Medical care for dependents at overseas posts is sometimes provided by the Agency on a limited basis somewhat analogous to the provision of space available transportation to U.S. personnel by the military services. That is, although there is no authority to expend funds for such care, where the Agency has established medical facilities for operational reasons or as authorized to provide treatment to employees, treatment may be provided dependents within the capabilities of the facility. This does not mean that a facility can be created or expanded in order to be able to care for dependents, but only that dependents may be given care by an already available facility to an extent that will not result in extra cost to the Government.

c. While no department of the Government can expend funds to return employees or dependents to the United States for compassionate reasons it is often possible by administrative action to reach the desired result. Certain classes of employees may be entitled to space available military transportation. Dependents may be returned to the United States at Government expense in advance of the employees although the entitlement to reimbursement does not become final until the employee acquires eligibility to travel. In such cases, of course, the dependents cannot return to the employee's post at Government expense unless he returns to the United States and then goes back to the post. (See 35 Comp. Gen. 101, 24 August 1955).

d. and e. We see no way at this time to provide the benefits stated in these subparagraphs. There is neither specific statutory authority nor any problem peculiar to the function of this Agency which would justify the use of the authority in section 10(b) of the CIA Act. (See OGC opinion no. 53-9)

6. This Agency, the Department of State, and many other agencies of the Government have endeavored over a long period of time to gain statutory authority to provide some of the benefits you suggest. Until this past session of Congress such efforts have been most noteworthy for their lack of success. In the last session bills providing all the above benefits except that stated in paragraph 2c were introduced on behalf of the Department of State and the Central Intelligence Agency. In addition, a proposed bill, cited as the Overseas Health and Medical Services Act of 1956, which would have provided certain of the above benefits to all Government employees overseas, was introduced. In all of these bills the benefits for dependents were subject to certain limitations, but the provision of any benefits was, of course, a great improvement. The Foreign Service Act amendments were enacted into law but the Central Intelligence Agency Act amendments and the Overseas Health and Medical Services Act failed to clear committees. As a result the Department of State for the first time has authority to provide medical benefits to dependents. Although they are not available to employees of this Agency or any other Agency of the Government there is every reason to believe that eventually, and probably in the near future, legislation will be enacted enabling us to provide similar benefits.

7. The following published opinions of the Office of General Counsel bear upon the problems discussed here.

52-3
53-4 (especially pages 11-13)
53-5
53-9
55-13

The Comptroller General's interpretation of the Agency's broad power to expend funds under the authority of section 10 of the CIA Act of 1949, appears in 31 Comp. Gen. 191, dated 21 November 1951.

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